



#29
\$98.04
\$98.04
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: James V. Young.
SERIAL NO.: 09/176,866
FILED: October 22, 1998
EXAMINER: Demille, Danton D.
DOCKET NO.: PHYS 6996
GROUP ART UNIT: 3764
FOR: MASSAGE APPARATUS

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail with sufficient postage in an envelope addressed to: MS Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 28, 2004.


Nelson D. Nolte, Reg. No. 42,938

RECEIVED

MS Appeal Brief-Patents
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

JUN 04 2004

TECHNOLOGY CENTER R3700

May 28, 2004
St. Louis, Missouri

RECEIVED
JUN -7 PM 3:03
OFFICE OF PATENT APPEALS
AND INTERFERENCES

REQUEST FOR REHEARING

Applicant submits this request for rehearing in order to point out the following error in the opinion rendered by the Board of Patent Appeals and Interferences in the appeal of the above-referenced case.

I. INTRODUCTION

The Board affirmed the Examiner's rejection of claim 1 under 35 U.S.C. § 102(b) over British patent GB 254,957 to Holt ("Holt"). In stating that Holt anticipates claim 1 of the present invention, the Board stated: "Where, as here, there is a reasonable basis to believe that Holt's applicator cavity and connection tube structures are capable of performing the claimed functions, it is incumbent upon the appellant to prove that such structures are not capable of performing the

claimed functions. The present record is devoid of such proof." See Opinion, page 8 (citations omitted).

However, the Board has committed clear error in that Applicant has identified that *Holt itself* explicitly indicates that it does not operate in the manner proposed by the Board. Therefore, there *is no* reasonable basis for the Board and the Examiner to conclude that Holt can operate in the manner proposed when *Holt itself says that it cannot*.

II. ARGUMENT

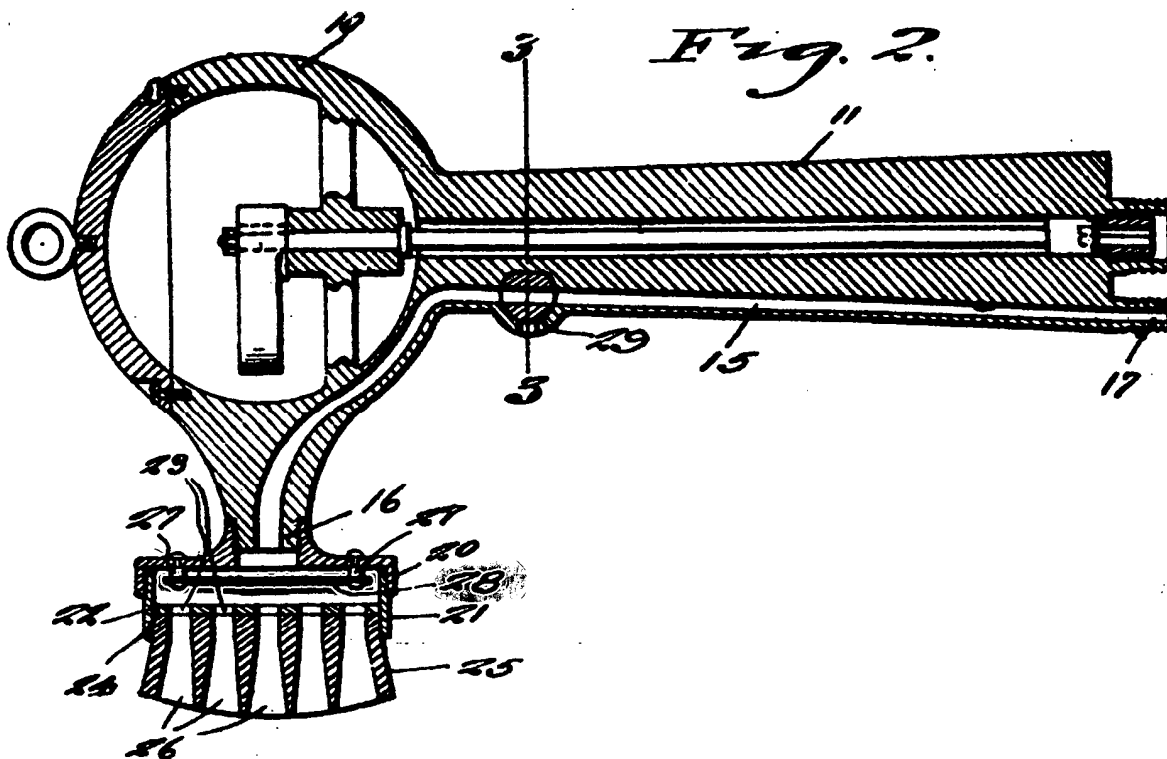
Specifically, claim 1 requires a "connection tube drawing contaminants from [a] cavity *through* said connection tube." As a result, claim 1 specifically requires that contaminants from the massage apparatus are transferred *through* the connection tube.

However, Holt *specifically discloses that contaminants DO NOT travel through the tube 18 of Holt*. Precisely, Holt states that:

By using the vibrator in the ordinary manner, dead skin, blackheads and other objectionable material will be loosened, while the suction provided will remove the loosened material and draw the same inward through the openings 26 and 23. *The plate 28 will prevent this material from being drawn into the air passage, the said material being collected within the cup-shaped holder 20.* The applicator 25 and the shell 21 may thereafter be removed and the device thoroughly cleaned [to remove the material (because it was not transferred through the tube)].

See Holt at page 2, line 57 to line 69.

Therefore, Holt *specifically and explicitly* states that material from the massage process (dead skin, etc.) *IS NOT* transferred through its hose or tube 18 *because it is blocked by the plate 28*. See Fig. 2 of Holt, reproduced below with highlighting of the plate 28.



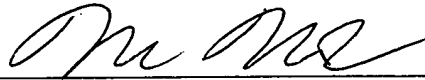
As stated above, claim 1 explicitly requires a "connection tube drawing contaminants from [a] cavity *through* said connection tube." As a result it is not seen how the Examiner or the Board can claim that Holt *does* draw contaminants through its tube 18 in light of Holt's own statement that it *does not*.

Applicant's other independent claim, claim 15, similarly requires that "said vacuum line draw[] contaminants from the cavity through said connection tube." Claim 15 was rejected as obvious over Holt in view of other prior art. Since Holt does not disclose the limitation of claim 15 recited above and the other cited art similarly does not disclose such limitation (not has the Examiner asserted as much), Holt and the other cited art does not render claim 15 obvious for the same reasons as claim 1.

III. CONCLUSION

It is, therefore, respectfully submitted that claims 1 and claim 15 are not anticipated by Holt because Holt does not disclose or suggest an element of each claim, namely a connection tube drawing contaminants from a cavity *through* the connection tube.

Respectfully submitted,



Nelson D. Nolte, Reg. No. 42,938
Polster, Lieder, Woodruff & Lucchesi, L.C.
12412 Powerscourt Dr. Ste 200
St. Louis, Missouri 63131
(314) 238-2400